



February 27, 2001

HOUSE BILL No. 1786

DIGEST OF HB 1786 (Updated February 26, 2001 1:22 PM - DI 73)

Citations Affected: IC 22-3; noncode.

Synopsis: Worker's compensation board magistrates. Authorizes the worker's compensation board to appoint magistrates to determine issues arising under worker's compensation, with certain exceptions. Requires a magistrate to report the magistrate's findings in an evidentiary hearing to the board member to whom the case was assigned. Requires the board member to enter the final order or award. Makes conforming changes.

Effective: July 1, 2001.

Liggett, Goodin, Dickinson, Buck

January 17, 2001, read first time and referred to Committee on Labor and Employment.
February 13, 2001, amended, reported — Do Pass; recommitted to Committee on Ways
and Means pursuant to Rule 127.
February 26, amended, reported — Do Pass.

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HB 1786—LS 7666/DI 102+



February 27, 2001

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

HOUSE BILL No. 1786

A BILL FOR AN ACT to amend the Indiana Code concerning labor and industrial safety.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 22-3-1-1 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) There is hereby created the
3 worker's compensation board of Indiana, which shall consist of seven
4 (7) members, not more than four (4) of whom shall belong to the same
5 political party, appointed by the governor, one (1) of whom he shall
6 designate as chairman. The chairman of said board shall be an attorney
7 of recognized qualifications.
8 (b) Each member of said board shall hold office for four (4) years
9 and until his successor is appointed and qualified.
10 (c) Each member of the board shall devote his entire time to the
11 discharge of the duties of his office and shall not hold any other
12 position of trust or profit or engage in any occupation or business
13 interfering with or inconsistent with the discharge of his duties as such
14 member.
15 (d) Any member of said board may be removed by the governor at
16 any time for incompetency, neglect of duty, misconduct in office, or
17 other good cause to be stated in writing in the order of removal. In case

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of a vacancy in the membership of the said board, the governor shall appoint for the unexpired term.

(e) The budget agency, with the approval of the governor, shall approve the salaries of the members of the board and the secretary.

(f) The board may appoint a secretary and may remove such secretary. The secretary shall have authority to administer oaths and issue subpoenas in connection with the administration of IC 22-3-2 through IC 22-3-7.

(g) The board **may appoint magistrates and may remove the magistrates. The board magistrates are entitled to determine issues arising under IC 22-3-2 through IC 22-3-7 with the following exceptions:**

(1) Claims regarding the compensability of an injury or a disease arising out of and in the course of the employment under IC 22-3-2-2(a) or IC 22-3-7-2(a).

(2) A determination as to whether one (1) of the special defenses contained in IC 22-3-2-8 or IC 22-3-7-21(b) operates as a bar to the employee's claim.

(3) A determination as to whether the employee is permanently and totally disabled for the purposes of IC 22-3-3-10, IC 22-3-3-13, or IC 22-3-7-16.

(4) The approval of settlement agreements under IC 22-3-2-15.

(5) Issues involving a lack of diligence, bad faith, or an independent tort under IC 22-3-4-12.1.

(h) The board, subject to the approval of the governor, may employ and fix the compensations of such clerical and other assistants as it may deem necessary.

~~(h)~~ **(i)** The members of the board and its assistants shall be entitled to receive from the state their actual and necessary expenses while traveling on the business of the board, but such expenses shall be approved by the chairman of the board before payment is made.

~~(i)~~ **(j)** All salaries and expenses of the board shall be audited and paid out of the state treasury in the manner prescribed for similar expenses in other departments or branches of the state service.

SECTION 2. IC 22-3-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 3. (a) The worker's compensation board may adopt rules under IC 4-22-2 to carry into effect the worker's compensation law (IC 22-3-2 through IC 22-3-6) and the worker's occupational diseases law (IC 22-3-7).

(b) The worker's compensation board is authorized:

(1) to hear, determine, and review all claims for compensation



1 under IC 22-3-2 through IC 22-3-7;
 2 (2) to require medical service for injured employees;
 3 (3) to approve claims for medical service or attorney's fees and
 4 the charges for nurses and hospitals;
 5 (4) to approve agreements;
 6 (5) to modify or change awards;
 7 (6) to make conclusions of facts and rulings of law;
 8 (7) to certify questions of law to the court of appeals;
 9 (8) to approve deductions in compensation made by employers for
 10 amounts paid in excess of the amount required by law;
 11 (9) to approve agreements between an employer and an employee
 12 or the employee's dependents for the cash payment of
 13 compensation in a lump sum, or, in the case of a person under
 14 eighteen (18) years of age, to order cash payments;
 15 (10) to establish and maintain a list of independent medical
 16 examiners and to order physical examinations;
 17 (11) to subpoena witnesses **and order the production and**
 18 **examination of books, papers, and records;**
 19 (12) to administer oaths;
 20 (13) to apply to the circuit or superior court to enforce the
 21 attendance and testimony of witnesses and the production and
 22 examination of books, papers, and records;
 23 (14) to create and undertake a program designed to educate and
 24 provide assistance to employees and employers regarding the
 25 rights and remedies provided by IC 22-3-2 through IC 22-3-7,
 26 and to provide for informal resolution of disputes;
 27 (15) to assess and collect, on the board's own initiative or on the
 28 motion of a party, the penalties provided for in IC 22-3-2 through
 29 IC 22-3-7; ~~and~~
 30 **(16) to appoint board magistrates to determine issues arising**
 31 **under IC 22-3-2 through IC 22-3-7 subject to the limitations**
 32 **set forth in section 1(g) of this chapter; and**
 33 **(17) to exercise all other powers and duties conferred upon the**
 34 **board by law.**

35 SECTION 3. IC 22-3-1-3.1 IS ADDED TO THE INDIANA CODE
 36 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 37 1, 2001]: **Sec. 3.1. A magistrate appointed by the worker's**
 38 **compensation board may do any of the following, but is not limited**
 39 **to the following:**

40 **(1) Administer an oath or affirmation that is required by law.**
 41 **(2) Order that a subpoena be issued in a matter pending**
 42 **before the board.**



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1 **(3) Conduct a prehearing conference or evidentiary hearing.**

2 **(4) Verify a certificate for the authentication of records of a**
 3 **proceeding conducted by the magistrate.**

4 SECTION 4. IC 22-3-1-3.2 IS ADDED TO THE INDIANA CODE
 5 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 6 1, 2001]: **Sec. 3.2. A magistrate shall report the magistrate's**
 7 **findings in an evidentiary hearing to the board member to whom**
 8 **the case was assigned. The board member shall enter the final**
 9 **order or award. The final order or award is subject to full board**
 10 **review under IC 22-3-4-7.**

11 SECTION 5. IC 22-3-4-2 IS AMENDED TO READ AS FOLLOWS
 12 [EFFECTIVE JULY 1, 2001]: Sec. 2. (a) The worker's compensation
 13 board may make rules not inconsistent with IC 22-3-2 through
 14 IC 22-3-6 for carrying out the provisions of IC 22-3-2 through
 15 IC 22-3-6. Processes and procedures under IC 22-3-2 through
 16 IC 22-3-6 shall be as summary and simple as reasonably may be. The
 17 board or any member of the board shall have the power for the purpose
 18 of IC 22-3-2 through IC 22-3-6 to subpoena witnesses, administer or
 19 cause to have administered oaths, and to examine or cause to have
 20 examined such parts of the books and records of the parties to a
 21 proceeding as relate to questions in dispute.

22 (b) The county sheriff shall serve all subpoenas of the board **and**
 23 **magistrates appointed under IC 22-3-1-1(g)** and shall receive the
 24 same fees as provided by law for like service in civil actions. Each
 25 witness who appears in obedience to such subpoenas of the board shall
 26 receive for attendance the fees and mileage for witnesses in civil cases
 27 in the courts.

28 (c) The circuit or superior court shall, on application of the board or
 29 any member of the board, enforce by proper proceedings the attendance
 30 and testimony of witnesses and the production and examination of
 31 books, papers, and records.

32 SECTION 6. IC 22-3-4-5 IS AMENDED TO READ AS FOLLOWS
 33 [EFFECTIVE JULY 1, 2001]: Sec. 5. (a) If the employer and the
 34 injured employee or the injured employee's dependents disagree in
 35 regard to the compensation payable under IC 22-3-2 through IC 22-3-6
 36 or, if they have reached such an agreement, which has been signed by
 37 them, filed with and approved by the worker's compensation board, and
 38 afterward disagree as to the continuance of payments under such
 39 agreement, or as to the period for which payments shall be made, or to
 40 the amount to be paid, because of a change in conditions since the
 41 making of such agreement, either party may then make an application
 42 to the board for the determination of the matters in dispute.



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(b) Upon the filing of such application, the board shall set the date of hearing, which shall be as early as practicable, and shall notify the employee, employer, and attorneys of record in the manner prescribed by the board of the time and place of all hearings and requests for continuances. The hearing of all claims for compensation, on account of injuries occurring within the state, shall be held in the county in which the injury occurred, **or** in any adjoining county, except when the parties consent to a hearing elsewhere. Claims assigned to an individual board member that are considered to be of an emergency nature by that board member, may be heard in any county within the board member's jurisdiction.

(c) All disputes arising under IC 22-3-2 through IC 22-3-6, if not settled by the agreement of the parties interested therein, with the approval of the board, shall be determined by the board.

SECTION 7. IC 22-3-4-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 6. The board by any or all of its members **or magistrates appointed under IC 22-3-1-1** shall hear the parties at issue, their representatives and witnesses, and shall determine the dispute in a summary manner. The award shall be filed with the record of proceedings, and a copy thereof shall immediately be sent to each of the employee, employer, and attorney of record in the dispute.

SECTION 8. IC 22-3-7-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 24. (a) The worker's compensation board may make rules not inconsistent with this chapter for carrying out the provisions of this chapter. Processes and procedures under this chapter shall be as summary and simple as reasonably may be. The board, or any member thereof, shall have the power, for the purpose of this chapter, to subpoena witnesses, administer or cause to have administered oaths, and to examine or cause to have examined such parts of the books and records of the parties to a proceeding as relate to questions in dispute. The county sheriff shall serve all subpoenas of the board **and magistrates appointed under IC 22-3-1-1(g)** and shall receive the same fees as provided by law for like service in civil actions. Each witness who appears in obedience to such subpoena of the board shall receive for attendance the fees and mileage for witnesses in civil cases in the courts. The circuit or superior court shall, on application of the board or any member thereof, enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers, and records.

(b) The fees of attorneys and physicians and charges of nurses and hospitals for services under this chapter shall be subject to the approval

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of the worker's compensation board. When any claimant for compensation is represented by an attorney in the prosecution of his claim, the board shall fix and state in the award, if compensation be awarded, the amount of the claimant's attorney's fees. The fee so fixed shall be binding upon both the claimant and his attorney, and the employer shall pay to the attorney, out of the award, the fee so fixed, and the receipt of the attorney therefor shall fully acquit the employer for an equal portion of the award.

(c) Whenever the worker's compensation board shall determine upon hearing of a claim that the employer has acted in bad faith in adjusting and settling said award, or whenever the board shall determine upon hearing of a claim that the employer has not pursued the settlement of said claim with diligence, then the board shall, if compensation be awarded, fix the amount of the claimant's attorney's fees and such attorney's fees shall be paid to the attorney and shall not be charged against the award to the claimant. Such fees as are fixed and awarded on account of a lack of diligence or because of bad faith on the part of the employer shall not be less than one hundred fifty dollars (\$150).

(d) The worker's compensation board may withhold the approval of the fees of the attending physician in any case until he shall file a report with the board on the form prescribed by such board.

SECTION 9. IC 22-3-7-27, AS AMENDED BY P.L.235-1999, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 27. (a) If the employer and the employee or the employee's dependents disagree in regard to the compensation payable under this chapter, or, if they have reached such an agreement, which has been signed by them, filed with and approved by the worker's compensation board, and afterward disagree as to the continuance of payments under such agreement, or as to the period for which payments shall be made, or as to the amount to be paid, because of a change in conditions since the making of such agreement, either party may then make an application to the board for the determination of the matters in dispute. When compensation which is payable in accordance with an award or by agreement approved by the board is ordered paid in a lump sum by the board, no review shall be had as in this subsection mentioned.

(b) The application making claim for compensation filed with the worker's compensation board shall state the following:

(1) The approximate date of the last day of the last exposure and the approximate date of the disablement.

(2) The general nature and character of the illness or disease



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1 claimed.

2 (3) The name and address of the employer by whom employed on
3 the last day of the last exposure, and if employed by any other
4 employer after such last exposure and before disablement, the
5 name and address of such other employer or employers.

6 (4) In case of death, the date and place of death.

7 (5) Amendments to applications making claim for compensation
8 which relate to the same disablement or disablement resulting in
9 death originally claimed upon may be allowed by the board in its
10 discretion, and, in the exercise of such discretion, it may, in
11 proper cases, order a trial de novo. Such amendment shall relate
12 back to the date of the filing of the original application so
13 amended.

14 (c) Upon the filing of such application, the board shall set the date
15 of hearing, which shall be as early as practicable, and shall notify the
16 parties, in the manner prescribed by the board, of the time and place of
17 hearing. The hearing of all claims for compensation on account of
18 occupational disease shall be held in the county in which the last
19 exposure occurred or in any adjoining county, except when the parties
20 consent to a hearing elsewhere. Claims assigned to an individual board
21 member that are considered to be of an emergency nature by that board
22 member, may be heard in any county within the board member's
23 jurisdiction.

24 (d) The board by any or all of its members **or magistrates**
25 **appointed under IC 22-3-1-1** shall hear the parties at issue, their
26 representatives, and witnesses, and shall determine the dispute in a
27 summary manner. The award shall be filed with the record of
28 proceedings, and a copy thereof shall immediately be sent by registered
29 mail to each of the parties in dispute.

30 (e) If an application for review is made to the board within thirty
31 (30) days from the date of the award made by less than all the
32 members, the full board, if the first hearing was not held before the full
33 board, shall review the evidence, or, if deemed advisable, hear the
34 parties at issue, their representatives, and witnesses as soon as
35 practicable, and shall make an award and file the same with the finding
36 of the facts on which it is based and send a copy thereof to each of the
37 parties in dispute, in like manner as specified in subsection (d).

38 (f) An award of the board by less than all of the members as
39 provided in this section, if not reviewed as provided in this section,
40 shall be final and conclusive. An award by the full board shall be
41 conclusive and binding unless either party to the dispute, within thirty
42 (30) days after receiving a copy of such award, appeals to the court of

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appeals under the same terms and conditions as govern appeals in ordinary civil actions. The court of appeals shall have jurisdiction to review all questions of law and of fact. The board, of its own motion, may certify questions of law to the court of appeals for its decision and determination. An assignment of errors that the award of the full board is contrary to law shall be sufficient to present both the sufficiency of the facts found to sustain the award and the sufficiency of the evidence to sustain the finding of facts. All such appeals and certified questions of law shall be submitted upon the date filed in the court of appeals, shall be advanced upon the docket of the court, and shall be determined at the earliest practicable date, without any extensions of time for filing briefs. An award of the full board affirmed on appeal, by the employer, shall be increased thereby five percent (5%), and by order of the court may be increased ten percent (10%).

(g) Upon order of the worker's compensation board made after five (5) days notice is given to the opposite party, any party in interest may file in the circuit or superior court of the county in which the disablement occurred a certified copy of the memorandum of agreement, approved by the board, or of an order or decision of the board, or of an award of the full board unappealed from, or of an award of the full board affirmed upon an appeal, whereupon the court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though such judgment has been rendered in a suit duly heard and determined by the court. Any such judgment of such circuit or superior court, unappealed from or affirmed on appeal or modified in obedience to the mandate of the court of appeals, shall be modified to conform to any decision of the industrial board ending, diminishing, or increasing any weekly payment under the provisions of subsection (i) upon the presentation to it of a certified copy of such decision.

(h) In all proceedings before the worker's compensation board or in a court under the compensation provisions of this chapter, the costs shall be awarded and taxed as provided by law in ordinary civil actions in the circuit court.

(i) The power and jurisdiction of the worker's compensation board over each case shall be continuing, and, from time to time, it may, upon its own motion or upon the application of either party on account of a change in conditions, make such modification or change in the award ending, lessening, continuing, or extending the payments previously awarded, either by agreement or upon hearing, as it may deem just, subject to the maximum and minimum provided for in this chapter.



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1 When compensation which is payable in accordance with an award or
2 settlement contract approved by the board is ordered paid in a lump
3 sum by the board, no review shall be had as in this subsection
4 mentioned. Upon making any such change, the board shall immediately
5 send to each of the parties a copy of the modified award. No such
6 modification shall affect the previous award as to any money paid
7 thereunder. The board shall not make any such modification upon its
8 own motion, nor shall any application therefor be filed by either party
9 after the expiration of two (2) years from the last day for which
10 compensation was paid under the original award made either by
11 agreement or upon hearing, except that applications for increased
12 permanent partial impairment are barred unless filed within one (1)
13 year from the last day for which compensation was paid. The board
14 may at any time correct any clerical error in any finding or award.

15 (j) The board or any member thereof may, upon the application of
16 either party or upon its own motion, appoint a disinterested and duly
17 qualified physician or surgeon to make any necessary medical
18 examination of the employee and to testify in respect thereto. Such
19 physician or surgeon shall be allowed traveling expenses and a
20 reasonable fee, to be fixed by the board. The fees and expenses of such
21 physician or surgeon shall be paid by the state only on special order of
22 the board or a member thereof.

23 (k) The board or any member thereof may, upon the application of
24 either party or upon its own motion, appoint a disinterested and duly
25 qualified industrial hygienist, industrial engineer, industrial physician,
26 or chemist to make any necessary investigation of the occupation in
27 which the employee alleges that he was last exposed to the hazards of
28 the occupational disease claimed upon, and testify with respect to the
29 occupational disease health hazards found by such person or persons
30 to exist in such occupation. Such person or persons shall be allowed
31 traveling expenses and a reasonable fee, to be fixed by the board. The
32 fees and expenses of such persons shall be paid by the state, only on
33 special order of the board or a member thereof.

34 (l) Whenever any claimant misconceives the claimant's remedy and
35 files an application for adjustment of a claim under IC 22-3-2 through
36 IC 22-3-6 and it is subsequently discovered, at any time before the final
37 disposition of such cause, that the claim for injury or death which was
38 the basis for such application should properly have been made under
39 the provisions of this chapter, then the application so filed under
40 IC 22-3-2 through IC 22-3-6 may be amended in form or substance or
41 both to assert a claim for such disability or death under the provisions
42 of this chapter, and it shall be deemed to have been so filed as amended

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1 on the date of the original filing thereof, and such compensation may
2 be awarded as is warranted by the whole evidence pursuant to the
3 provisions of this chapter. When such amendment is submitted, further
4 or additional evidence may be heard by the worker's compensation
5 board when deemed necessary. Nothing in this section contained shall
6 be construed to be or permit a waiver of any of the provisions of this
7 chapter with reference to notice or time for filing a claim, but notice of
8 filing of a claim, if given or done, shall be deemed to be a notice or
9 filing of a claim under the provisions of this chapter if given or done
10 within the time required in this chapter.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Labor and Employment, to which was referred House Bill 1786, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning labor and industrial safety and to make an appropriation.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1786 as introduced.)

LIGGETT, Chair

Committee Vote: yeas 12, nays 0.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1786, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete the title amendment in the committee report adopted by the House Labor and Employment Committee to HB 1786 February 13, 2001.

Page 11, delete lines 13 through 26, in the committee report adopted by the House Labor and Employment Committee to HB 1786 February 13, 2001.

and when so amended that said bill do pass.

(Reference is to the committee report adopted by the House Labor and Employment Committee to HB 1786 on February 13, 2001.)

BAUER, Chair

Committee Vote: yeas 24, nays 0.

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